

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

EXXON MOBIL OIL CORPORATION,	) NEWARK VICINAGE
)
Plaintiff,	) Civil No. 2:09-cv-05214-JLL-CCC
)
v.	) [PROPOSED] ORDER
	) DISTRIBUTING THE RETAINAGE
BROCON PETROLEUM, INC., JAMES	) HELD BY EXXONMOBIL OIL
MITCHELL CONSTRUCTION MANAGEMENT	) CORPORATION AND
INC., CUSTOM CARE SERVICES INC.,	) EXTINGUISHING CLAIMS OF
UNITED STATES OF AMERICA-INTERNAL	) CUSTOM CARE SERVICES, INC.
REVENUE SERVICE, and S&D CONCRETE	) AND JAMES MITCHELL
CORPORATION	) CONSTRUCTION MANAGEMENT,
	) INC.
Defendants.)
)

WHEREAS, ExxonMobil Oil Corporation (“ExxonMobil”) commenced this action in order to resolve the distribution of \$144,508.80, which was held as retainage pursuant to a contract between ExxonMobil and Brocon Petroleum, Inc. (“Brocon”) (the “Retainage”);

WHEREAS, ExxonMobil became aware that several parties had monetary claims against Brocon;

WHEREAS, ExxonMobil was unable to determine to which parties the Retainage should be distributed;

WHEREAS, the United States of America, Custom Care Services, Inc., and James Mitchell Construction Management, Inc. (collectively referred to as the “Remaining Defendants”) answered the Complaint;

WHEREAS, Brocon and S&D Concrete Corporation did not answer the Complaint, or otherwise appear, and have each had Final Judgments by Default entered against them on April 19, 2010;

WHEREAS, the Remaining Defendants have agreed to the relative priority of their claims for the Retainage;

WHEREAS, James Mitchell Construction Management, Inc. (“James Mitchell”) filed a construction lien with the Bergen County Clerk on May 17, 2006 in the amount of \$65,628.70 against Brocon for work performed on behalf of ExxonMobil, which is recorded at Book 35, pages 1-3 (“James Mitchell Lien”);

WHEREAS, James Mitchell and Brocon settled a lawsuit regarding the James Mitchell Lien for \$36,050.00, which, given post-judgment interest rates, currently equals \$42,531.10.

WHEREAS, Custom Care Services, Inc. (“Custom Care”) filed a construction lien with the Bergen County Clerk on October 27, 2006 in the amount of \$40,690.00 against Brocon for work performed on behalf of ExxonMobil, which is recorded at Book 36, pages 28-29 (“Custom Care Lien”);

WHEREAS, Custom Care obtained default judgment against Brocon regarding the Custom Care Lien in the amount of \$40,690.00, which, given post-judgment interest rates, currently equals \$46,935.08;

WHEREAS, the United States of America filed a Notice of Federal Tax Lien against Brocon on February 9, 2007 and served a Notice of Levy on ExxonMobil on September 19, 2008 (“Notice of Levy”);

WHEREAS, Brocon Petroleum is indebted to the United States of America for assessments in connection with 26 U.S.C. § 6672 in the amount of \$748,598.13, as of January 4, 2010, plus interest and costs that have accrued and will continue accruing according to law; and

WHEREAS, the Plaintiff and the Remaining Defendants to this action have consented to entry of this Order, which shall resolve the distribution of the Retainage.

NOW THEREFORE, it is hereby:

ORDERED that the Retainage be distributed as follows:

1. \$42,531.10 to James Mitchell Construction Management, Inc.;
2. \$46,935.08 to Custom Care Services, Inc.;
3. \$55,042.62 to the United States of America.; and it is hereby

ORDERED that upon payment of the Retainage in accordance with this Order, ExxonMobil has no further liability to Custom Care or James Mitchell in connection with anything which Brocon did, or failed to do; and it is hereby

ORDERED that upon payment of the Retainage in accordance with this Order, ExxonMobil has no further liability to the United States of America in connection with the amount of the Retainage; and it is hereby

ORDERED that ExxonMobil is completely and forever discharged from any and all liability to, and claims by, Custom Care and James Mitchell with respect to monies allegedly owed to them by Brocon, or because of anything ExxonMobil did, or failed to do, in connection with ExxonMobil's relationship with Brocon; and it is hereby

ORDERED that all liens, attachments, or other similar encumbrances, if any, filed by or on behalf of James Mitchell or Custom Care, and/or served upon ExxonMobil with respect to Brocon, or the property located at 185 Route 17, Highway #3, East Rutherford, New Jersey, are hereby discharged, satisfied, or otherwise removed and no longer in force. This paragraph applies, but is not limited to, the James Mitchell Lien and the Writ of Execution served upon

ExxonMobil by James Mitchell in connection with the Judgment it secured against Brocon in the amount of \$36,050.00; and the Custom Care Lien, and any Writ of Execution, or other similar document that Custom Care served, or may have served, upon ExxonMobil in connection with the Judgment obtained against Brocon in the Superior Court of New Jersey, Monmouth County, Law Division, at Docket No. L-3094-07. This paragraph does not apply to the Notice of Levy filed by the United States. This Order may be filed with any Clerk, or other public official, and shall constitute sufficient warrant and direction to have any lien, attachment, or other encumbrance filed by, or on behalf of, any Remaining Defendant, marked as discharged, satisfied, and otherwise removed from the public record.

DATED this ____ day of ____ 2010.

SO ORDERED

HON. JOSE L. LINARES

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2010, I electronically filed the foregoing [Proposed] Order Distributing the Retainage Held By ExxonMobil Oil Corporation And Extinguishing Claims of Custom Care Services, Inc. and James Mitchell Construction Management, Inc. with the Clerk of the Court using the CM/ECF system.

/s/ Christopher J. Williamson
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